

REMARKS

This is in response to the Office Action (FINAL) mailed on 12 August 2005, in which claims 1-8, 20-22 and 24 were rejected under 35 U.S.C. §102(b), and claims 9-19, 23, 25 and 26 were rejected under 35 U.S.C. §103(a). With this Amendment, claims 1, 6-8, 14 and 20 are amended.

Claim Rejection --35 U.S.C. §102(b)

In the Office Action, the Examiner rejected claims 1-8, 20-22 and 24 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,887,836 issued to Simjian.

With this Amendment, claim 1 has been amended to further define the invention as having a *unitary rigid* handle positionable between a stowed position, a pivotable position and a locked position which distinguishes claim 1 of the present invention from the Simjian patent. As stated at Column 3, lines 35-39 of the Simjian patent, "...[t]he handle is divided into two parts. A forward part 42A which is constructed to be drawn completely free of the channel 44 and a rear portion 42B which remains within the channel upon extending the handle." The Simjian patent further states at Column 4, lines 14-17 that "...the leaf spring 68 drops into a slot 70 disposed in the handle portion 42B to lock the handle in its extended position." Therefore, not only does the Simjian patent fail to teach or disclose a unitary rigid handle, only the rear portion 42B is "locked" into place, allowing free pivoting of forward part 42A. Claim 1 of the present invention, however, defines the unitary rigid handle as being positionable between a stowed position, a pivotable position and a locked position. Each of these positions are separate and distinct from one another. For example, when the handle of the present invention is in the stowed position, the handle of the present invention is in neither the pivotable position nor the locked position. Or when the handle of the present invention is in the pivotable position, the handle is in neither the stowed position nor the locked position. Or when the handle of the present invention is in the locked position, the handle is in neither the stowed position nor the pivotable position. The forward part 42A of the Simjian patent, however, is still pivotal even when the rear portion 42B is locked by leaf spring 68. In addition to the Simjian patent suggesting an articulated handle, and not a unitary rigid handle, the Simjian

patent neither teaches nor suggests that forward part 42A is lockable, as forward part 42A is free to swing at all times, even when 42B is “locked” by leaf spring 68. Therefore, Applicant believes does not anticipate the present invention, and that claim 1 is novel and in allowable form. Reconsideration and allowance to that effect are respectfully requested.

Claim 2 is also believed to be in allowable form for the same reasons claim 1 is in allowable form. As discussed, when handle 42 of the Simjian patent is “locked”, forward part 42A is still allowed to pivot, and thus can not be said to be “... rigidly connect[ed] to a first side of the platform while in the locked position....” Therefore, Applicant believes claim 2 to be novel and in allowable form. Additionally, because claim 2 depends from claim 1, and it is now believed that claim 1 is novel and in allowable form, then claim 2 is likewise novel and in allowable form. Reconsideration and allowance to that effect are respectfully requested.

With respect to claim 3, the Examiner stated that the Simjian patent discloses “...a handle 78 rigidly connected to a first side of a platform 20 while locked and substantially vertical while locked.” Applicant respectfully disagrees. On the contrary, it appears that the Simjian patent actually teaches away from having a handle that can achieve a substantially vertical locked position. Referring to Figure 4 of the Simjian patent, forward part 42A appears pivotal from a horizontal position to about a forty-five degree angle from horizontal (shown in dashed lines). At forty-five degrees from horizontal, however, forward part 42A appears to almost contact leaf spring 68. Further movement of forward part 42A towards the vertical will certainly cause contact with leaf spring 68, and by no means is forward part 42A permitted to travel much further past the forty-five degree angle from horizontal. As such, because of the placement of leaf spring 68, the Simjian patent neither teaches nor suggests, and actually teaches away from, “...the handle [being] substantially vertical while in the locked position” as defined by claim 3 of the present invention. Therefore, Applicant believes claim 3 to be novel and in allowable form. Further, because claim 3 depends from claim 2, and claim 2 is believed to be novel and in allowable form, then claim 3 is also novel and in allowable form. Reconsideration and allowance to that effect are respectfully requested.

In the Office Action, the Examiner also stated that the Simjian patent disclosed “...first and second hinge members 76 and a handle comprising 78 (*sic*) an elongated portion, and a cylindrical member 76....” Applicant respectfully disagrees. Firstly, it is not understood how “first and second hinge members 76” can be considered as two separate hinge members when the Simjian patent only discloses reference 76 to be a single pin. Secondly, it is not understood how reference 76 can simultaneously be “first and second hinge members” *and* “a cylindrical member”, especially with regard to claim 7. However, claim 7 of the present invention depended from claim 5, and with this Amendment claim 5 has been amended to included elements of claim 7. Claim 7 has been amended to further define the invention. Claim 5 now defines the invention as having *first and second spaced-apart hinge members fixedly connected to the platform, the handle slidably disposable between the hinge members and first and second stop members attached to the handle proximate a distal end of the handle, whereupon positioning the handle from the stowed position to the pivotable position, the first stop member engages the first hinge member and the second stop member engages the second hinge member whereby the handle is pivotal about the first and second hinge members.* The Simjian patent neither teaches nor suggests first and second spaced-part hinge members fixedly connected to the platform, nor does the Simjian patent teach or suggest first and second stop members attached to the handle for engaging the respective hinge members. Therefore, Applicant believes claims 5 and 7 to be novel and in allowable form. Alternatively, because claims 5 and 7 depend in some fashion from claim 1, and it is believed that claim 1 is novel and in allowable form, then claims 5 and 7 are novel and in allowable form. Reconsideration and allowance of claims 5 and 7 are respectfully requested.

Additionally, claim 4 has been amended to define the present invention as including a channel member fixedly attached to an underside of the platform for receiving the handle. Because claim 4 depends from claim 5, and it is believed that claim 5 is novel and in allowable form, claim 4 is similarly novel and in allowable form. Reconsideration and allowance to that effect are respectfully requested.

With respect claim 6, claim 6 has been amended to depend from claim 4. Because

it is believed that claim 4 is novel and in allowable form, it is similarly believed that claim 6 is novel and in allowable form. Reconsideration and allowance of claim 6 are respectfully requested.

In the Office Action, the Examiner further stated that the Simjian patent discloses "...a tongue member 42B positioned upon a elongated portion a tongue member 42B (*sic*).” The Applicant respectfully disagrees. However, claim 8 has been amended to better clarify the present invention. Claim 8 now defines the tongue member of the present invention as *extending from and downwardly parallel to the handle, wherein the handle is positionable to place the locking plate between the tongue member and the handle to rigidly lock the handle to the platform*. Claim 8 has also been amended to now depend from claim 1 (instead of cancelled claim 7). As such, the handle referred to in claim 8 is a *unitary rigid handle*, and the tongue member *extend[s] from and downwardly parallel to the handle*. This is neither taught nor suggested by the Simjian patent. Furthermore, *the handle of the present invention is positionable to place the locking plate between the tongue member and the handle*. Again, this is neither taught nor suggested by the Simjian patent. The Simjian patent only suggests the use of a leaf spring 68 which disposes within a slot positioned in rear part 42B. (Col. 4, lines 14-17). The Simjian patent neither teaches nor suggests positioning the handle to place the locking plate *between the tongue member and the handle, wherein the tongue extends away from and downwardly parallel to the unitary rigid handle*. For these reasons, it is believed that claim 8 is therefore novel and in allowable form. Additionally, because claim 8 depends from claim 1, and it is believed that claim 1 is novel and in allowable form, then claim 8 is novel in allowable form. Reconsideration and allowance to that effect are respectfully requested.

Next, claim 20 has been amended to incorporate the elements of claim 24 and to clarify the present invention as having "...a *unitary rigid* handle positionable between a *substantially vertical* locked position and a stowed position..." For the same reasons given with respect to claims 1 and 3, *supra*, it is now believed that claim 20 is novel and in allowable form. Also, because claims 21 and 22 depend from claim 20, and it is now believed that claim 20 is novel and allowable form, then claims 21 and 22 are novel and in

allowable form. Reconsideration and allowance of claims 20-22 are respectfully requested.

Claim Rejection – 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 9-12 and 25 as being unpatentable over the Simjian patent in view of U.S. Patent No. 2,659,100 issued to Cramer. Applicant respectfully disagrees. Claim 9 defines the present invention as having "...a downwardly extending guard member *attached to a first end of the platform.*" The Simjian patent neither teaches, suggests nor discloses downwardly extending guard members. The Cramer patent, while disclosing a sheet metal housing 3 (Col. 1, lines 43-44), neither teaches, suggests nor discloses *attaching* the sheet metal housing 3 to a platform. Because neither the Simjian patent nor the Cramer patent teach, suggest or disclose a downwardly extending guard member **attached to a first end of the platform**, claim 9 is non-obvious and therefore in allowable form. Additionally, because claim 9 depends from claim 1, and it is believed that claim 1 is novel, non-obvious and in allowable form, then claim 9 is non-obvious and in allowable form. Furthermore, because claims 10-12 depend from claim 9, and it is believed that claim 9 is non-obvious and in allowable form, then claims 10-12 are non-obvious and in allowable form. Reconsideration and allowance of claims 9-12 are respectfully requested.

Similarly, claim 25 defines the present invention as having "...a guard disposed about each fixed directional wheel *and attached to the platform.*" As stated in the previous paragraph, neither the Simjian patent nor the Cramer patent teach, suggest or disclose a guard member **attached to the platform**. Therefore, it is believed that claim 25 is non-obvious and in allowable form. Furthermore, because claim 25 depends from claim 20, and it is believed that claim 20 is non-obvious and in allowable form, then claim 25 is also non-obvious and in allowable form. Reconsideration and allowance of claim 25 is respectfully requested.

In the Office Action the Examiner rejected claims 13 and 23 as being upatentable over the Simjian patent in view of U.S. Patent No. 3,658,383 issued to Sisson. The Examiner stated that the Simjian patent "...discloses a hand-truck but does not disclose a

foot-brake." The Examiner further stated that the Sisson patent:

...discloses a hand-truck 1 comprising a handle 39, and a foot-brake 14, 15 connected to a platform 18. [The Sisson patent] adds a foot-brake to prevent shifting of hand-truck 1 during unloading. Col. 1, lns. 65-73. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the hand-truck of [the Simjian patent] to include a hand-brake, as per the teachings of [the Sisson patent], to prevent shifting during unloading.

Applicant respectfully disagrees. Referring to Column 1, lines 65-73 of the Sisson patent, a pair of small outrigger wheels 11 are located centrally near the outboard ends 12 and 13 of the frame 2. The outrigger *wheels* are preferably associated with a *suitable brake structures* 14 controlled, in this example, by operating levers 15 whereby the *wheels 11 are selectively locked into position* to prevent shifting of the vehicle. (Emphasis added). Claims 13 and 23 define the present invention as having the foot-brake engageable **with the ground, not the wheels**. Neither the Simjian patent nor the Sisson patent teach, disclose or suggest a foot-brake engageable with the ground. As such, Applicant believes that claims 13 and 23 are non-obvious over the prior art, and thus in allowable form. Alternatively, because each of claims 13 and 23 depend from a claim that was found to be non-obvious, and are otherwise in allowable form, then each of claims 13 and 23 are subsequently non-obvious and in allowable form. Reconsideration and allowance of claims 13 and 23 are respectfully requested.

In the Office Action, the Examiner rejected claims 14 and 17-19 as being unpatentable over Simjian in view of U.S. Patent No. 3,236,539 issued to Ketterer. With this Amendment, claim 14 has been amended to further define the present invention to include *first and second spaced-apart hinge members fixedly attached to the channel member*, with a handle connectable to the platform including a *unitary rigid member slidably disposable within the channel member and between the first and the second spaced-apart members*. Claim 14 also includes a tongue portion *spaced-apart from and extending downwardly parallel the rigid member*. The Simjian patent neither teaches nor suggests first and second spaced-part hinge members fixedly attached to the channel member, nor does the Simjian patent teach, suggest or disclose a stop member attached to the handle for engaging the first and second hinge members. Further, the Examiner stated

that "Ketterer discloses a platform 4 connected to a handle 12 and a stop 15." However, the stop 15 in the Ketterer patent is not a part of the handle as is defined by claim 14 of the present invention. Therefore, it is not understood how the Ketterer patent can be combined with the Simjian patent in such a manner. Additionally, the Simjian patent neither teaches, suggests nor discloses a tongue-portion spaced-apart from and extending downwardly parallel the rigid member of the handle. Nor does the Ketterer patent. Therefore, Applicant believes claim 14 to be non-obvious and in allowable form. Further, claims 17-19 depend in some fashion from claim 14, and because it is believed that claim 14 is non-obvious and in allowable form, then claims 17-19 are non-obvious and in allowable form. Reconsideration and allowance of claims 14 and 17-19 are respectfully requested.

In the Office Action, the Examiner rejected claim 15 as being unpatentable over the Simjian patent in view of the Ketterer patent and the Sisson patent. Claim 15 defines the invention to include "...a foot-brake attached to the platform, whereupon enacting the foot-brake, *the foot-brake engages the ground* thereby preventing movement of the hand-truck." For the same reasons as already discussed with regard to the rejection of claims 13 and 23, in addition to the fact that neither the Simjian patent, nor the Ketterer patent, nor the Sisson patent suggest, teach or disclose a foot-brake *engageable with the ground*, claim 15 is believed to be non-obvious over the prior art and in allowable form. Additionally, claim 15 depends from claim 14, and because it is believed that claim 14 is non-obvious and in allowable form, then claim 15 is non-obvious and in allowable form. Reconsideration and allowance of to that effect is respectfully requested.

In the Office Action, the Examiner rejected claim 16 as being upatentable over the Simjian patent in view of the Ketterer patent and the Cramer patent. Applicant respectfully disagrees. Claim 16 defines the invention to include "...first and second guard members *attached to the underside of the platform.*" (Emphasis Added). Neither the Simjian patent, nor the Ketterer patent, nor the Cramer patent suggest, teach or disclose a guard member attached to an underside of the platform. It is therefore believed that claim 16 is non-obvious over the prior art and in allowable form. Additionally, because claim 16 depends from claim 14, and because it is believed that claim 14 is non-

obvious and in allowable form, then claim 16 is non-obvious and in allowable form. Reconsideration and allowance of to that effect is respectfully requested.

Finally, the Examiner rejected claim 26 as being unpatentable ver the Simjian patent. Because claim 26 depends in some fashion from claim 20, and it is believed that claim 20 is non-obvious and in allowable form, then claim 26 is also non-obvious and in allowable form. Reconsideration and allowance of claim 26 is respectfully requested.

CONCLUSION

For the aforementioned reasons, it is now believed that claims 1-23, 25 and 26 are in order for allowance. Reconsideration and notice of allowance to that effect for claims 1-23, 25 and 26 are respectfully requested.

Respectfully submitted,

DuFAULT LAW FIRM

Date: 13 October 2005

By:



Dustin R. DuFault
Reg. No. 51,634
DuFault Law Firm
Lumber Exchange Building
10 South Fifth St, Ste 920
Minneapolis, Minnesota 55402
Ph. (612) 250-4851
Fax (612) 465-8801